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THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 THAT ONE VIDEO
12 ENTERTAINMENT, LLC, a California limited liability company,

Plaintiff.

vs.

14 KOIL CONTENT CREATION PTY
15 LTD., an Australian proprietary
16 limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25, inclusive.

Defendants.

CASE NO: 2:23-cv-02687 CAS (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

**DECLARATION OF BENJAMIN LAU IN
SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY ADJUDICATION**

[Motion; Declarations of Jacque Khalil; Daniel Tracey, William Francis, and John Begakis, Esq.; Separate Statement of Undisputed Fact; and [Proposed] Order filed concurrently herewith]

Hearing

Date: September 9, 2024

Time: 1:30 p.m.

Dept.: Courtroom 10A (10th Floor)
350 W. First Street
Los Angeles, CA 90012

Los Angeles, CA 90012
Judge: Hon. Stephen V. Wilson

Action Filed: April 10, 2023
Trial Date: September 17, 2024

**DECLARATION OF BENJAMIN LAU IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY ADJUDICATION**

DECLARATION OF BEJAMIN LAU

I, Benjamin Lau, declare and state as follows:

3 1. I am an attorney duly licensed to practice law in the State of California
4 and before this Court, and am over 18 years of age. I am a principal at the law firm
5 Jackson Lewis, P.C., which is immigration counsel for THAT ONE VIDEO
6 ENTERTAINMENT, LLC, a California limited liability company (“Plaintiff”), the
7 Plaintiff in this action. I hereby submit this Declaration in support of the Motion for
8 Summary Adjudication (the “Motion”) filed by Plaintiff against Defendants KOIL
9 CONTENT CREATION PTY LTD., an Australian proprietary limited company
10 doing business as NOPIXEL (“NoPixel”) and MITCHELL CLOUT, an individual
11 (“Clout”) (collectively, “Defendants”). I know all of the following facts of my own
12 personal knowledge and, if called upon and sworn as a witness, could and would
13 competently testify thereto.

14 2. Based on an email I received from Larry Zerner, Esq., who I understand
15 to be counsel for Defendants in this action, I am aware that Mr. Zerner claims that
16 Jacque Khalil, as the principal and Chief Operating Officer of Plaintiff, submitted an
17 H-1B visa application for Plaintiff's employee, Daniel Tracey (the "Application"),
18 that contained supposedly "false information." Specifically, Mr. Zerner claims that
19 "[i]n the application, Mr. Khalil was asked if Tracey would be placed with a
20 secondary entity and responded, 'no.'" However, the instructions for the Labor
21 Condition Application (i.e., the Department of Labor form where the referenced
22 question appears) clarify that **the referenced question was simply asking whether**
23 **Mr. Tracey would be physically placed at a worksite controlled by a third-party**
24 **business for which Plaintiff was providing Mr. Tracey's services – not whether**
25 **Plaintiff would be providing Mr. Tracey's services to third-party businesses**
26 **generally.** Since it is my understanding that Mr. Tracey worked remotely for

1 Defendants and was, therefore, not physically placed at any worksite controlled by
2 Defendants, the answer to that question was “no.”

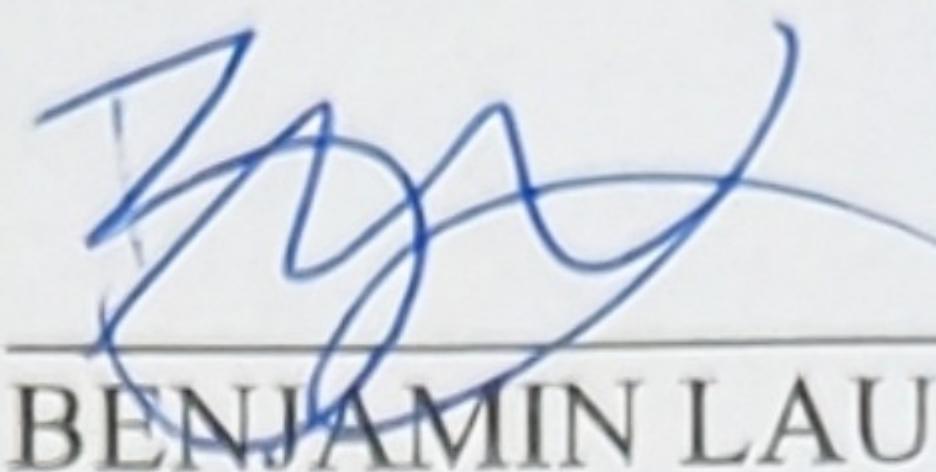
3 3. I am aware that Mr. Zerner also contends that Mr. Khalil submitted a
4 letter in connection with the Application that was “untrue” because it supposedly
5 omitted various information about the details of Mr. Tracey’s arrangement with
6 Defendants. Specifically, Mr. Zerner claims that “[t]he letter gives the approximate
7 amount of time that Danny would be working at each task for TOVE” but that Mr.
8 Khalil stated in his deposition that “Tracey also was required to stream himself
9 gameplaying on Twitch” and “somehow none of this was mentioned in the letter...”
10 However, the Application did specify that ten percent (10%) of Mr. Tracey’s job
11 duties would be to “[c]reate video tutorials demonstrating software modifying
12 techniques and general media content discussing software modifying strategies for
13 interactive multimedia entertainment productions.” As described, this job duty would
14 include streaming certain content on Twitch, particularly content of Mr. Tracey
15 demonstrating coding techniques. It is also important to note that the assigned
16 percentage is simply an estimate and is intended to serve solely as an approximation
17 of the average amount of time Mr. Tracey would spend on such task in a given week

18 4. Finally, I am aware that Mr. Zerner makes the argument that the
19 Application was generally false or untrue because information regarding Mr.
20 Tracey’s arrangement with Defendants were omitted from the Application. However,
21 this Court should understand that **U.S. immigration regulations do not require a**
visa petitioner (in this case, Plaintiff) to disclose that the beneficiary of the visa
(in this case, Mr. Tracey) will be working for any particular third party (in this
case, Defendant NoPixel). So long as the employer-employee relationship between
25 the petitioner and the beneficiary is met, and the worksite information is correct, then
26 the visa requirements are met.

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1 I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct, and that this Declaration was executed on August
3 12, 2024, at Los Angeles, California.

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BENJAMIN LAU

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a "Notice of Electronic Filing" automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 12, 2024

By: /s/ John Begakis
John M. Begakis